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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,677	07/18/2003	Stephen Allen Johnson	3971-13-CON	3654
22442	7590	04/26/2005	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			RINEHART, KENNETH	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/622,677	JOHNSON ET AL.	
	Examiner	Art Unit	
	Kenneth B Rinehart	3749	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

*Response to Arguments*

Applicant's arguments filed 3/31/2005 have been fully considered but they are not persuasive. Regarding the IDS the applicant's statement is correct with respect to the IDS filed 7/29/04. However, the IDS filed 10/2/03 fails to comply with 37 CFR 1.98(a)(3) concerning the Japanese document. The applicant's revision to claim 47 overcomes the rejection. Regarding the applicant's arguments. The applicant states that the examiner acknowledges that the declaration is sufficient under the law by stating the applicant is relying on inherency to justify the support of the claims under 35 USC 112, first paragraph. The examiner disagrees. The examiner stated "Regarding applicant's arguments concerning claims 1, 19 and 24 and the ash fusion temperature characteristic selected from the group that consisting of initial deformation temperature, softening temperature, hemispherical temperature, and fluid temperature, the applicant appears to be relying on inherency and implication to provide support for this language in the method claims." (emphasis added) The examiner never stated that these purported inherency arguments by the applicant were correct. Regarding applicant's arguments concerning the AFT characteristics, the applicant does not mention AFTs in the disclosure. The applicant states that iron bearing additive lowers the ash melting temperature and therefore implies that it also lowers the AFT characteristics. On page 26 the applicant states that "According to the standard, an ash sample is prepared by burning coal under oxidizing conditions at temperatures of 1470 to 1650OF. The ash is pressed into a mold to form a triangular pyramid cone 0.75 in. in height with a 0.25 in. triangular base. The cone is heated in a furnace at a controlled rate to provide a temperature increase of 15OF per minute. The initial deformation temperature (IT or ID) refers to the temperature at which the tip of the pyramid begins to fuse or show signs of

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deformation. The softening temperature (ST) is the temperature at which the sample has deformed to a spherical shape where the height of the cone is equal to the width at the base ( $H=W$ ). The softening temperature is commonly referred to as the fusion temperature. The hemispherical temperature (HT) is the temperature at which the cone has fused down to a hemispherical lump and the height equals one half the width of the base ( $H=1/2W$ ). The fluid temperature (FT) is the temperature at which the ash cone has melted to a nearly flat layer with a maximum height of 0.0625 in. etc. " The examiner could not find in the applicant's specification any reference to pressing the ash into a mold to form a pyramid where the tip of the pyramid begins to fuse or deform, or deformation to a spherical shape. In short, there was no discussion of this process of forming a pyramid and conducting this process. Consequently, an individual of ordinary skill in the art would not recognize in the applicant's disclosure a description of the invention defined by the claims. Regarding the new claims examination on the merits has ended. It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims or add new claims after a final rejection (37 CFR 1.116). In the response the applicant has added new claims 48-133. The applicant has failed to provide good and sufficient reasons why the amendment adding the claims are necessary and were not earlier introduced (37 CFR 1.116(b)). Therefore, the amendment will not be entered.

  
**KENNETH PINEHART**  
**PRIMARY EXAMINER**